NO. 12532

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

POTLATCH FORESTS, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

AUTHORITIES CITED

Cases:

AUTHORITIES CITED—Continued

Cases (Continued):

Statutes:

Miscellaneous:

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151, *et seq.*),[1] for enforcement of its order (R. 80-83)[2] issued on December 21, 1949, against respondent Potlatch Forests,

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[1]The pertinent provisions of the Act are set out in Appendix A, *infra*.

[2]In the following statement references preceding the semicolon, if one appears, are to the Board's findings; succeeding references are to the supporting evidence. References to the printed Record are designated "R"; occasionally references are made to testimony or exhibits which are not included in the printed record but which are set forth in Appendix B to this brief.

Inc., following the usual proceedings under Section 10 of the Act. The Board's decision and order are reported in 87 NLRB, No. 118. This Court has jurisdiction under Section 10 (e) of the Act, the unfair labor practices having occurred within this judicial circuit, at respondent's Clearwater plant in Lewiston, Idaho.[3]

STATEMENT OF THE CASE

The Board's order is based upon its finding that respondent violated Section 8 (a) (3) and (1) of the amended Act by laying off two of its employees, Cloninger and Walters, pursuant to a policy by which, in the event of a reduction in force, employees who were hired during, or returned to work prior to, the termination of an economic strike on October 13, 1947, are retained in respondent's employ in preference to those who did not return to work until the strike was settled.

The issues before this Court are:

(1) Whether the Board properly found that application to employees of a layoff policy which discriminates against them on the basis of whether or not they remained on strike until the strike termination date con-

[3]Respondent, Potlatch Forests, Inc., a Maine corporation having its principal office and place of business in Lewiston, Idaho, is engaged in felling timber and manufacturing lumber and Lumber products, operating sawmills and manufacturing plants at Lewiston, Potlatch, and Coeur d'Alene, Idaho, and conducting logging operations, one at Headquarters, Idaho, and vicinity, and the other at Bonville, Idaho, and vicinity (R. 27; 2, 8). The value of the products manufactured by respondent annually is in excess of $1,000,000 (R. 27; 3, 8). These products are shipped by respondent from its plants in Idaho to customers in various States of the United States (*ibid.*). The respondent admits that it is engaged in commerce within the meaning of the Act (R. 27; 3, 9) and no jurisdictional issue is presented.

stitutes a violation of Section 8 (a) (3) and (1) of the amended Act;

(2) Whether the Board is barred under the 6 months limitation proviso to Section 10 (b) of the amended Act from finding that respondent engaged in the unfair labor practice here involved; and

(3) Whether the Board may properly issue a complaint where the local which filed the charges and the international union with which it is affiliated are in compliance with the filing requirements of Section 9 (f), (g), and (h) of the amended Act but two other locals which belong to the same bargaining unit with the charging local have not complied with those filing requirements.

I. The Board's Findings

A. Background

1. Contractual Relations between Respondent and the Union.

The International Woodworkers of America, C.I.O., herein called the IWA, was certified by the Board on March 4, 1944 and has since been the recognized exclusive bargaining agent of respondent's production and maintenance employees in a bargaining unit embracing respondent's five operations (R. 28; 3, 9). On April 1, 1946, a collective bargaining agreement, styled Master Working Agreement, was executed by respondent, on the one hand, and, on the other, jointly by the IWA and each of its four constituent locals (namely, Locals 10-119, 10-358, 10-361, and 10-364) which number among its members employees of respondent's various operations (R. 28; 93-98). The IWA and its four locals, jointly, are referred to in the Master Agreement as the Union, and they will so be referred to in this brief.

The Master Working Agreement expressly recognized that the principle of seniority should govern retention of

jobs during any curtailment of operations (R. 28; 95). Detailed provision was made for the application of this principle. Among other things, the agreement provided (R. 29; 96):

> All seniority shall be considered first by job classification, second by department, and last by plant. It shall be used as a basis for preference in shift as well as promotion and in event of curtailment or during slack work periods an employee demoted shall go down through the same route by which he progressed.

Under the seniority system provided by the Master Working Agreement, all common labor jobs in a given department were regarded as lying in a pool (R. 29; Tr. 190-191). An employee in the common labor classification was entitled to retention rights in his particular department on the basis of his seniority there (R. 29; 94-98). And, if his tenure was insufficient to allow him to retain his job in his department, he could exercise his plant seniority to claim retention rights over any similarly classified junior employee in the plant for whose job he was qualified (*ibid*). In no event could such an employee, upon a reduction in force, be forced out of his department ahead of another employee similarly classified who had less department seniority and less plant seniority and whose job he was capable of filling (R. 29-94-98, Tr. 190).

The Master Agreement of April 1, 1946, ran for a term of 1 year (R. 30; G. C. Ex. 2). Before its expiration date, negotiations were begun for a new contract (R. 30; 101-103). By May 28, 1947, respondent and the Union had reached agreement on all dispute points, save the Union's demand for the elimination of an area wage

differential (*ibid.*). The agreement of the parties was embodied in two written memoranda, dated May 7 and May 28, 1947 (R. 30; 101, 102, G. C. Ex. 3 and 4). These in substance, set out the parties' interpretation and clarification of certain clauses of the 1946 Master Agreement that had been in dispute; made certain revisions with regard to wages; and provided for an extension of the 1946 Master Agreement, subject to the modifications noted, until April 1, 1948 (*ibid.*). The seniority provisions of the former agreements were left unchanged, except for a minor interpretation not here material (*ibid.*). The issue of the wage differential, alone, was left open for future negotiations (R. 30; 103).

2. The Strike and the Strike Agreement.

Negotiations on the wage differential issue having reached an impasse, the Union on August 7, 1947, called an economic strike of the respondent's employees (R. 30; 103-104). The strike at first resulted in a complete shutdown of all the respondent's operations (R. 30; 90). But starting about the end of August, employees began to return to work across the picket lines, and respondent also hired some new employees as replacements for the strikers(R. 30; 90, 150). By October 10, 1947, some 1,750 employees were working in the bargaining unit, which normally has a complement of about 2,600 (R. 31; 262-263).

With its strike apparently hopelessly lost, the Union sued for peace. After a number of meetings, representatives of the Union and of respondent settled upon a written form of memorandum embodying five points which the negotiators had agreed upon as a basis for settlement of the strike to be submitted to the Union membership for approval (R. 31; 255, 257, 304). Union representatives had made it clear during the negotiations that

any agreement reached would be only tentative until approved by the Union membership (*ibid.*). The memorandum, which was not signed or initiated at that time, read as follows (R. 32; 106):

> As a basis for settlement of the present dispute between the IWA and the Potlatch Forests, Inc., the following is proposed.
>
> 1. The union agrees to withdraw its demands for a 7½¢ wage increase to eliminate the differential. Wages to remain at rates as of August 6, 1947. Picket lines be withdrawn as of October 13, 1947.
>
> 2. All former employees at Potlatch Forests, Inc., will return to work *without discrimination*, on Monday, October 13th. Former employees shall return to work by October 22, *to protect their job rights*. In the event the job formerly held by the returning employee is not open, the employee will be given other work and receive pay on the basis of the rate paid on his former job.
>
> 3. Men previously on gypo basis will be assigned to gypo work if still available. If gypo work is not available, pay will be at the rate shown in wage schedule for the job.
>
> 4. The Company has informed the Union that the night shift of the box factory in the Clearwater Mill cannot be started at this time, due to business conditions, and for that reason, it may not be able to employ all of the former box factory workers immediately. These box factory workers will be given preference over new employees in filling vacancies in other departments.
>
> 5. *The present contract will remain in effect without change* except that the following is substituted for the 4th paragraph in Article VII.

> As a condition of continued employment, every employee who confirms to the Company his membership in the Union as of November 29, 1947, or becomes a member of the Union after November 20, 1947, shall be required to maintain his membership in good standing. (Italics supplied.)

On October 11, the strike settlement proposal in the form set out above was submitted to membership meetings of the several locals involved, voted on by the membership, and approved (R. 33; 109, 310). On October 12, the strike settlement memorandum, in the precise form set out above, was dated and initialed by the respective representatives of respondent and the Union (R. 33-34; 288).

On October 13, 1947, in compliance with the strike settlement agreement, the Union terminated the strike and withdrew its pickets (R. 34; 91).

3. The Inauguration by Respondent of Its "Return-to-Work Policy", With "Strike Seniority"

Shortly after the strike settlement agreement was signed, a group of respondent's higher management officials determined upon and drafted a so-called "Return-to- Work Policy" (R. 34; 245, 328-330, 334). The text of the Policy, to the extent applicable to the issue of this case, is as follows (R. 34; 124):

> POTLATCH FORESTS, INC. – RETURN TO WORK POLICY
>
> Employees who returned to work October 13th to 22nd inclusive, 1947, will, in case of curtailment, be laid off ahead of employees who returned to work or were hired on or before October 12, 1947 (settlement date). The order of layoff in each

group will be based on each person's previous seniority rights.

Employees who returned to work on or before October 12, 1947, reestablished their previous seniority for *all purposes.* Employees who returned to work October 13 to October 22, inclusive, 1947, reestablished their previous seniority for purposes of curtailment as among this group (returning October 13 to 22, incl.), and for training and *promotion among all groups.*

Employees who returned to work on or before October 22, 1947, but whose jobs had been filled while they were on strike will be given an opportunity to return to their old jobs at the first opening occurring. If this opportunity is passed up, then the employee's rate will revert to the rate of the job he holds and he will have no further right to return to his old job.

* * *

Employees who returned to work on or before October 22, 1947, will retain all previous seniority rights for purposes of training and promotion.

Former employees who returned to work, after October 22, 1947, will be classed as new employees.

The preference given by this policy to employees who returned to work or were hired before the end of the strike, October 13, 1947, over those who did not return to work until the strike was over was referred to in the evidence, and is hereinafter sometimes referred to as "strike seniority." It was stipulated by respondent that since the termination of the strike it has continued to maintain and give effect to the seniority principles set out in its "Return-to-Work Policy" (R. 36; 247-249).

The "Return-to-Work Policy" was drafted by officials of the respondent without consulting the Union (R. 36; 329). After it was drafted, it was neither submitted to any Union official nor was it printed or otherwise generally publicized among the employees in the respondent's plants (R. 36; 221, 223, 234, 252, 254, 257-258). Employees were made aware of "strike seniority" only if they as individuals inquired concerning their own relative seniority status (R. 36; 223, 234). It was not until June 1949, after the charges in this proceeding had been filed, that the Union officials were shown for the first time a copy of the "Return-to-Work Policy" (R. 36; 128, 335-336).

The Union, however, was not unaware that respondent was maintaining a policy according to which employees who had worked during the strike were given preferential treatment at variance with the seniority provisions of the Master Agreement (R. 37; 109-110, 279-281). Notice to that effect, at least in a general way, was brought home to the Union shortly after the termination of the strike when railroad department employees were returning to work (*ibid.*).[4]

Respondent contended that the "Return-to-Work Policy" was not only in accordance with, and provided for, by

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[4]Prior to June 1949, when it was given a copy of a proposed agreement authorizing the Return to Work Policy, the Union apparently did not have any definite knowledge of the policy. Thus Frank Gordon, one of the Union's representatives, testified (R. 148):

> This, in general, is about what during a long period of time the Union surmised that it might be, a policy similar to this, but there has absolutely never been a different statement made to the Union at any time as to exactly what the Company's policy was. There was hints and threats and everything else but never at any time did they come right out and say what the

the strike settlement agreement but was sanctioned by a collateral oral agreement with the Union representatives entered into while the strike settlement agreement was being negotiated. To support its claim as to the existence of such a colateral oral agreement, respondent relied upon the following facts:

During the settlement negotiations, various drafts of a proposed settlement agreement had been prepared (R. 47; 264). On October 10, the Union negotiators submitted a draft in the precise form later initialed by the parties, except for one clause (R. 47; 265). There was added to the provision that the former employees were "to return to work without discrimination," the clause "and without loss of seniority" (*ibid.*). The insertion of that clause met with objection from respondent's negotiators (*ibid.*). They were then principally concerned with protecting men already at work in particular jobs against being displaced from such jobs by returning strikers (R. 47; 285). Respondent's negotiators protested that the insertion of the clause referring to seniority would not at the conclusion of the strike protect employees already working against displacement by returning strikers in the particular jobs they were then holding (R. 48; 265, 285-287). The Union negotiators, declining to accede to any relinquishment of its striking members' seniority rights, strongly opposed respondent's position (R. 48; 305). After some lengthly discussion of this issue, at which no agreement was reached, the Union negotiators retired from the meeting room to consider the matter privately (R. 48; 265, 286, 305). They returned with the words, "and without loss

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Company policy was and they kept the Union in doubt at all times.

Gordon further testified that the policy which the Union suspected the Company of following, was not followed in all cases (R. 147).

of seniority" stricken from the draft (*ibid.*). Asked by respondent's representatives why they had deleted the phrase, the Union negotiators replied that it was going to be difficult enough to persuade the Union membership to accept a strike settlement involving no gain to the strikers, without further complicating settlement by any reference to seniority (R. 48-49; 266). Respondent's negotiators made no response, except to say, "Maybe that is all right too," and to add that it probably was a matter of no importance anyway since it could not affect anyone until a serious curtailment took place, and no such curtailment was in prospect at that time (R. 48-49; 268).

Respondent's Assistant General Manager, Lauschel, testified that he "assumed" the Union's negotiators had agreed to "strike seniority;" and that his "assumption" was based entirely upon their conduct in striking "and without loss of seniority" from the draft (R. 49-50; 274, 289). He admitted, however, that at no time during the course of the negotiations, or thereafter, had the Union negotiators expressed in words their agreement with respondent's position on "strike seniority" (*ibid.*). Asked by respondent's counsel why, if there was such an agreement, no affirmative mention was made of it in the memorandum, Lauschel replied (R. 50; 266):

> They [the Union's negotiators] didn't want it in there. . . . Beause they said they couldn't sell that type of a thing to their membership, they would rather not have anything said about seniority to complicate the settlement of the strike, and get the men back to work.

He further testified that until the memorandum was dated and initialed on October 12, 1947, he had regarded it simply as a proposal for a settlement, but that, once initialed, he regarded it no longer as a proposal, but

as a strike settlement agreement embodying the full understanding of the parties (R. 50; 288-289). That too, was the view of the Union (R. 50; 319).

4. The negotiations in the Spring of 1948

In the Spring of 1948, negotiations were begun for the execution of a new Master Agreement (R. 39; 112). No issue was raised during the negotiations with regard to the seniority provisions of the former contract (R. 39; 116). After the negotiations had resulted in an agreement upon all points in issue a "recommended" agreement dated April 13, 1948, was signed by the negotiating parties detailing the agreed modifications and amendments and interpretations to the former contract (R. 39; 112). In accordance with the usual practice, the agreement of April 13, 1948, was then submitted to the Union membership, and was ratified (R. 39; 114). It was understood that after ratification a new Master Agreement was to be drawn by respondent to include the provisions of the last one, as modified by the various written memoranda of agreement that had been signed since (R. 39; 113-115). When the new Master Agreement was typed by respondent, it included a clause reading, "The strike settlement of October 12, 1947, shall control the application of the seniority article" (R. 39; 115-116). Taking the position that no mention had been made in the negotiations concerning this clause, the Union refused to sign the Master Agreement in that form (*ibid.*). But although no Master Agreement was signed, the record is clear, and the Board found contrary to the position of the respondent's counsel, that the last Master Agreement, as modified by the several agreements hereinabove referred to, was in fact extended in its operative effect until April 1, 1949

(R. 39-40).[5]

B. The layoffs of Cloninger and Walters

Pursuant to its strike seniority policy, respondent laid off, among other employees, the two in whose behalf Local 10-364 filed charges in this case.

One of the two, Gail Cloninger, had remained on strike until October 13, 1947, the strike termination date (R. 40; 157). Upon returning to work, he was assigned to common labor, working as a truck driver's helper on the carpenter's crew in the maintenance department, the very job on which he had been working immediately before the strike (R. 40-41; 155-156, 162-163, 168). On December 30, 1948, when respondent found it necessary to curtail operations, a number of employees, including Cloninger, were laid off from their jobs in the maintenance department (R. 41; 157-159). Cloninger was replaced in his job as truck driver's helper by an employee Cox who had returned to work during the course of the strike and was working in the carpenter's crew of the maintenance department as a common laborer when Cloninger was laid off (R. 41; 167).

After receiving his layoff notice, Cloninger, in accordance with respondent's usual practice, was referred to the employment office for possible reassignment (R. 42-43; 163-164). He was then offered another job in a different department which paid the same rate which Cloninger had been receiving (R. 43; 164, 166). He accepted the new assignment after unsuccessfully processing a grievance in regard to his layoff; and before the hearing in this case,

[5]This is established by the following: (1) The record clearly shows that the parties dealt with each other on that basis (R. 40; 118-120); (2) Charles J. Commerford, Clearwater's personnel director until July 1, 1949, so testified (R. 40; 227); (3) The Master Agreement provides for 60 days' notice prior to the April 1 expiration date of a change of terms (R. 40; G. C. Ex. 2).

he was reassigned to his old job in the maintenance department (R. 43; 165-167, 254).

Although Cloninger was a shop steward of the Union (R. 166), he did not know about respondent's strike seniority policy and had never even heard rumors about it until approximately a month before receiving his layoff notice (R. 168). He first learned of the precise nature of the policy only after his layoff and in connection with processing the grievance in regard to it (R. 158-159, 167-168).

Respondent concedes that under its pre-strike interpretation of the applicable seniority provisions, Cloninger's seniority, both in the maintenance department and in the plant, would have been considered greater than that of Cox; that Cloninger would have had prior retention rights in the department upon a curtailment of operations; and that he could not have been replaced by Cox in a situation such as this (R. 41; 225-226). The reason Cox was retained in the department in preference to Cloninger, according to the testimony of Clearwater Personnel Director William Green, was that Cox had returned to work while the strike was in progress and, on the basis of respondent's post-strike seniority interpretations, was consequently entitled to "strike seniority" (R. 41; Tr. 199).

Claude A. Walters, the other employee in whose behalf Local 10-364 filed charges, was also classified as a common laborer (R. 43; 171). Like Cloninger, he remained out during the entire period of the strike and

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On January 28, 1949, respondent notified the Union of its desire "to negotiate a written agreement based on the Master Agreement effective April 1, 1946, as modified by the subsequent agreements of May 7 and 28, 1947, October 12, 1947, and April 13, 1948, incorporating in one agreement the various interpretations, clarifications, and amendments which have never been combined in a single signed agreement" (R. 40; 122, G. C. Exh. 9).

returned to work on October 13 when the strike was called off (*ibid.*). Upon his return, he was given his former job in the unstacker department and remained there until January 18, 1949, when, as a result of a curtailment of operations, it became necessary for respondent to lay off some employees (R. 43; 171-172, 189-190, G. C. Exh. 12. On that date Walters was laid off, and another employee, Slater, also classified as a common laborer, was retained and given a clean-up job to which Walters would have been entitled had his seniority been figured on the pre-strike basis (R. 44; 225-226, G. C. Exh. 12, pp. 56-59).[6] Respondent concedes that the reason for retaining Slater while laying off Walters, was that Slater, unlike Walters, had "strike seniority," Slater having returned to work before the termination of the strike (R. 44; 189-190, Tr. 198, G. C. Exh. 12).

In giving Walters his layoff notice, his foreman informed him that he would have retained his job in the department had he come back to work only 1 day during the strike, and that "on account of the strike" he could not "bump" other men whom he otherwise would have been entitled to "bump" (R. 43; 172-173). Walters, apparently unable to understand the basis upon which he had been selected for layoff, asked the Union's International Representative, Gordon, for an explanation (R. 45; 92, 186). Gordon, after first consulting respondent's personnel director about Walters, decided not to advise Walters to file a grievance but, instead, to add Walters' name to the unfair labor practice charge then being prepared (R. 45; 152, 186).

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[6]Between the date of Walters' layoff from the unstacker department and his acceptance of another job in the dock department on March 10, 1949, respondent offered him several other jobs which he declined for personal reasons (R. 44-45; G. C. Exh. 12). On March 21, 1949, he was reassigned to the unstacker department (R. 45; G. C. Exh. 12).

C. Respondent's Special Defenses

In addition to contending that it was warranted in giving layoff notices to Cloninger and Walters because the Union had agreed to the strike seniority policy pursuant to which the layoffs were made, respondent pleaded two special defenses. It urged first, that the proceedings were barred by the proviso to Section 10 (b) of the Act, which states that no complaint shall issue based upon unfair labor practices occurring more than 6 months prior to the filing and serving of charges, and secondly, that the Board was without authority to proceed in the premises by virtue of the provisions of Section 9 (f), (g), and (h) (R. 17, 19, 336-337).

In respect to the first of these special defenses, the fact is that the charge initiating the proceedings before the Board[7] was filed more than six months after respondent's inauguration of its strike seniority policy but less than six months after the layoffs of Cloninger and Walters in accordance therewith and less than six months after they or either of them had any notice of that policy (see *supra*, pp. 7, 14, 15).

In respect to the second defense, the record shows that both the International Woodworkers of America and Local 10-364, the labor organization which filed the charge initiating the proceedings before the Board,[8] were in compliance with Section 9 (f), (g), and (h) at the time the complaint issued but two of the local unions of the Inter-

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[7]Cloninger and Walters received their layoff notices on December 30, 1948 and January 18, 1949, respectively (R. 41, 43). The initial charge was filed on February 16, 1949, and served on February 17, 1949 (G. C. Exh. 1-A, 1-B). An amended charge was filed on March 18, 1949 and served on March 21, 1949 (G. C. Exh. 1-C, 1-D).

[8]The charge was filed by "International Woodworkers of America, Local 10-364" and was signed "A. F. Hartung, International Vice President" (G. C. Exh. 1-D).

national Woodworkers of America which were parties to the Master Agreement were not then in compliance with that section (R. 85).

D. The Board's Conclusions

The Board overruled respondent's special defenses (R. 26), and held that the Union had not agreed to respondent's strike seniority policy (R. 52-53) and that respondent, by maintaining such policy, "more specifically by applying and giving effect to it in the layoffs of Cloninger and Walters," had engaged in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act (R. 64-65). The Board concluded, however, upon the facts set forth *supra*, pp. 13, 15, that since Cloninger and Walters, after being discriminatorily laid off from their respective departments, were offered jobs in other departments and were later restored to the jobs held by them before their discriminatory layoffs, neither a reinstatement nor back-pay order was appropriate to remedy the unfair labor practice (R. 63-64). But, it appearing from the record that respondent was continuing to maintain its discriminatory policy and that employees in addition to Cloninger and Walters would likely suffer similar discriminations upon future curtailment of respondent's operations, the Board concluded that it could appropriately remedy the unfair labor practice only by requiring respondent to cease and desist from continuing to maintain or give effect to the policy (R. 64).

II. The Board's Order

The Board's order requires respondent to cease and desist from (a) maintaining or giving effect to any seniority or layoff policy which discriminates against any of its employees with regard to the order in which they are to be selected for layoff, or with respect to any aspect of their

employment relationship, on the basis of whether they had or had not engaged in a strike or concerted activities or on the basis of the period during which they had engaged in such strike or concerted activities; and from discouraging membership in Local 10-364, C. I. O. or its parent organization. International Woodworkers of America, C. I. O., or any other labor organization of its employees, by in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment (R. 80). The order also requires respondent to post the customary notices at its Clearwater plant at Lewiston, Idaho (R. 81).

SUMMARY OF ARGUMENT

1. By treating as new employees, for layoff purposes, those economic strikers who at the termination of the strike were reinstated to the jobs they formerly held, and laying off such employees prior to others who were hired or returned to work during the course of the strike, respondent discriminated against such employees in violation of Section 8 (a) (3) and (1) of the Act. The Board's finding that the bargaining representative did not agree to the policy pursuant to which such discrimination took place and, on the contrary, was operating under agreements with respondent which protected the seniority rights of all the employees, is supported by substantial evidence.

Respondent may not avoid responsibility for the maintenance and application of its discriminatory strike seniority policy on the theory that the employees here involved were only partially reinstated upon their return to work at the conclusion of the strike. The fact that they belonged to the common labor pool within their respective departments and were not entitled to any specific jobs does not give other common laborers who were hired or returned to work before the termination of the strike any superior

claim to common labor jobs upon a reduction in force.

2. The complaint in this proceeding is not barred by the limitations proviso to Section 10 (b) of the amended Act which states that no complaint shall issue based upon unfair labor practices occurring more than 6 months prior to the filing and serving of the charges. The layoffs of employees Cloninger and Walters, constituting the unfair labor practices here involved, occurred less than 6 months prior to the filing and serving of the charges.

In the first place, the record shows that respondent withheld and the employees did not have knowledge of the promulgation of the policy until within the limitation period. It is difficult, therefore, to see how respondent's conduct in the abstract, prior to the time the employees knew of it, could constitute a violation of Section 8 (a) (3) of the amended Act, as to which a charge should have been filed, since it could be argued that such undisclosed conduct could not reasonably tend "to discourage membership in a labor organization" within the meaning of that section. In the second place, even if the employees did know of the policy prior to the 6-month period, the limitations proviso to Section 10 (b) would not be applicable because it was not the inauguration of the policy but the maintenance of it during the 6-month period and the application of it to the two employees here involved which the Board found to be an unfair labor practice.

3. Since the local which filed the charges in this proceeding and the international union with which it is affiliated were in compliance with the financial statement and non-Communist affidavit filing requirements of Section 9 (f), (g) and (h) of the amended Act when the complaint was issued, it is immaterial that other locals which, together with the charging local, constituted the

appropriate bargaining unit may not then have been in compliance.

ARGUMENT

The board properly found that respondent violated Section 8 (a) (3) and (1) of the amended Act by applying to employees Cloninger and Walters a layoff policy which discriminated against them because they had remained on strike until the strike termination date

Respondent concedes that employees Cloninger and Walters, for layoff purposes, were considered as new employees when reinstated upon the termination of the strike, and that they would not have been laid off from their respective departments had they returned to work before the termination of the strike (*supra*, pp. 14-15). This fact, without more, warranted the Board in finding that respondent discriminated in regard to their tenure of employment and interfered with their right to engage in concerted strike activity, in violation of Section 8 (a) (3) and (1) of the amended Act.

It is well settled that under Section 2 (3) of the amended Act, which defines the term "employee" to "include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute," an economic striker remains an employee within the meaning of the Act and must be reinstated by his employer upon the termination of the strike if there is a vacant place which he can fill. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345-347. Failure thus to reinstate him or discrimination against him in any other way because he has engaged in a protected union or concerted activity is a violation of Section 8 (a) (3) and (1) *(id.)*.

Although conceding the commission of the very acts which constitute the unfair labor practice, respondent seeks to defend its action by arguing (1) that the seniority of

which Cloninger and Walters were deprived does not exist as a right in the absence of a contract providing for it and that the Union agreed to and acquiesced in the seniority policy pursuant to which respondent effected the layoffs (R. 71-75), and (2) that respondent did not, in any event, discriminate against Cloninger and Walters because there were no specific jobs at the end of the strike to which Cloninger and Walters were entitled to be reinstated; that they were common laborers, belonging to a common labor pool within their respective departments; that the filling during the strike of any common labor jobs in a given department operated as a partial displacement of all in that department's common labor pool who remained out on strike; and that strikers such as Cloninger and Walters were entitled only to "partial reinstatement," a qualified form of reinstatement which restored to them all their former job rights except the right which might otherwise flow from their seniority to displace upon a future reduction in force those employees who, during the course of the strike, had already "partially" displaced them (R. 76). The Board properly rejected both these defences (R. 55-60).

A. Respondent's contentions regarding seniority

It is true, as respondent asserts, that the Act does not create seniority rights or guarantee such rights to employees and that those rights in organized industries are usually created by contract between the employer and bargaining representative. *Aeronautical Lodge* v. *Campbell*, 337 U. S. 521. The point, however, is that if the employer does grant seniority rights, he may not discriminate against employees in conferring those rights on the basis of whether or not they have engaged in a strike or other union or concerted activity protected by the statute. *N. L. R. B.* v. *Walt Disney Products*, 146 F. 2d 44, 47

(C. A. 9), certiorari denied, 324 U. S. 877; *N. L. R. B.* v. *Star Publishing Co.*, 97 F. 2d 465, 468, 470 (C. A. 9); *N. L. R. B.* v. *Sandy Hill Iron and Brass Works*, 165 F. 2d 660, 662 (C. A. 2); *Polish National Alliance* v. *N. L. R. B.*, 136 F. 2d 175, 181 (C. A. 7), affirmed 322 U. S. 643. The discrimination against which Section 8 (a) (3) protects employees embraces "all elements of the employment relationship which in fact customarily attend employment and with respect to which an employer's discrimination may as readily be the means of interfering with employees' right of self-organization as if these elements were precise terms of a written contract of employment." *N. L. R. B.* v. *Waterman S. S. Corp.*, 309 U. S. 206, 218. And, as was pointed out in *N. L. R. B.* v. *Republic Steel Corp.*, 114 F 2d 820, 821 (C. A. 3), striking employees, upon reinstatement, are entitled to be "treated in all matters involving seniority and continuity of employment as though they had not been absent from work." Consequently, regardless of the method by which respondent seeks to accomplish the result, it may not lawfully select its employees for layoff solely or even partly because they have engaged in a strike whereas the retained employees have not.

Whether or not the bargaining representative of employees may lawfully, in behalf of the employees, waive their right to insist upon the statutory guarantee against discriminatory treatment is a question which the Board found unnecessary to pass upon in this case[9] for the Board found that the Union had not waived such right (R. 59-60).

The Board's finding in this respect is supported by sub-

[9]See *McQuay-Norris Mfg. Co.* v. *N.L.R.B.*, 116 F. 2d 748, 750-751 (C.A. 7), certiorari denied, 313 U. S. 565; cf. *Medo Photo Supply Corp.* v. *N.L.R.B.*, 321 U. S. 678, 697; cf. *Briggs Indiana Corp.*, 63 NLRB 1270, 1272.

stantial evidence. As shown *supra,* pp. 4-5, at the time the strike was called, there was in effect an agreement between respondent and the Union which provided for seniority of all employees on a job, departmental and plant basis. The strike settlement agreement provided that the strikers should return to work "without discrimination" and that the "present contract" would "remain in effect without change" except for a maintenance of membership provision not here material. It was submitted to and voted upon by the Union membership as a condition upon which they were willing to return to work. Attempts by respondent thereafter to lay off employees on a basis different from that provided in the strike settlement agreement were protested by the Union as a breach by respondent of the existing agreements with the Union. The Union was never even shown a copy of respondent's "Return to Work Policy," the substance of which respondent claims was agreed to by the Union, until after the charges in this proceeding were filed.

Moreover, the same provisions regarding seniority which were provided in the Master Agreement in effect when the strike commenced were thereafter included in the April 1948 "recommended agreement" (incorporating modifications, amendments and interpretations of the former agreements) which was signed by the negotiators and approved by the Union membership (*supra,* p. 12). And although this recommended agreement was never incorporated into a new Master Agreement as contemplated by the parties, the last Master Agreement, with the modifications, amendments and interpretations set forth in the "recommended agreement," was in fact extended in its operative effect until April 1, 1949, subsequent to the layoffs of Cloninger and Walters (*supra,* p. 12).

Respondent's attempt to show that the Union had agreed to a strike seniority policy which, for layoff purposes, treat-

ed as new employees those strikers who did not return to work intil the strike was terminated would as the Board found (R. 50-51), "patently vary and contradict the unambiguous terms of the strike settlement agreement of October 12, 1947." Accordingly, the Board found (R. 51) that "the parol evidence rule—which has as its basis the assumed intention of parties who have evidenced their understanding by a written document to place themselves beyond the uncertainties of extrinsic evidence—is applicable and controlling in this situation." We submit that the finding is in accord with a wealth of authority, including this Court, and is dispositive of respondent's contention that the Union agreed to the strike seniority policy. *Helvering* v. *Coleman-Gilbert,* 296 U. S. 369, 374; *Grace Brothers* v. *Commissioner,* 173 F. 2d 170, 175 (C. A. 9); *Titus* v. *United States,* 150 F. 2d 508, 511 (C.A. 9); *Jurs* v. *Commissioner,* 147 F. 2d 805, 810 (C. A. 9); *Pugh* v. *Commissioner,* 49 F. 2d 76, 79 (C.A. 5), certiorari denied 284 U.S. 642; 9 *Wigmore on Evidence* (3d ed. 1940), secs. 2425, 2446; Hughes, *Law of Evidence* (1907 ed.), sec. 40.

But, as the Board further pointed out (R. 52-53), respondent's contention must also be rejected for the further reason that even if it were permissible to inquire into the negotiations leading up to the strike settlement agreement in order to vary the terms of that agreement, the record of such negotiations does not support the claim that the written memorandum embodying the settlement expressed only a part of such agreement, or that there was a supplementary, verbal understanding providing for the strike seniority. In support of its position, respondent asserts that during the strike settlement negotiations, the Union, on October 10, submitted a draft which provided that all striking employees should return to work "without discrimination" and "without loss of seniority" and that the latter clause was later dropped from the final agree-

ment (R. 73-75). As shown *supra*, pp. 10-11, respondent's negotiators objected to the inclusion of the latter clause on the ground that it would not, at the conclusion of the strike, protect those who had been placed in jobs formerly occupied by employees who were still on strike. The question of protecting the jobs of replacements in the event of a future reduction in force, if raised at all, was mentioned only incidentally. After lengthy discussion, the Union negotiators retired to discuss the matter privately. They decided to agree to delete the clause relating to seniority since they concluded that it conflicted in a sense with another provision of the draft providing that returning strikers were not to be reinstated if the jobs formerly held by them had been filled. A second reason for their capitulation was that except for cases in which a striker had been replaced, seniority rights would be fully protected because of the provision in the settlement agreement extending the existing collective bargaining agreement. The Union negotiators thereupon returned to the meeting and announcd their willingness to delete the seniority clause. The reason given to respondent's negotiators for such willingness was that complication of the settlement by reference to seniority would create additional difficulties in obtaining ratification by the Union membership. The sole response of respondents' negotiators was that the matter was probably of no importance since it could not affect anyone until a serious curtailment took place and that no such curtailment was in prospect at that time.

The memorandum of settlement, with the deletion noted above, was submitted to and ratified by the membership of the locals affiliated with the International on October 11, 1947. The following day it was initialed by representatives of respondent and of the Union. As was conceded by one of respondent's negotiators, at no time during the

course of the negotiations or thereafter did the Union negotiators even orally express their agreement to respondent's strike seniority policy.[10] In addition, the same negotiator testified that after the draft had been initialed, he regarded it as a strike settlement agreement embodying the full understanding of the parties (R. 50; 288).

We submit that the Board correctly concluded that respondent is precluded from attempting to show that the settlement agreement did not represent its whole agreement with the Union and that in any event, the Board's finding that the record does not support respondent's contention that the Union agreed to strike seniority is supported by substantial evidence. *N. L. R. B.* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *N. L. R. B.* v. *Reeves Rubber Co.*, 153 F. 2d 340, 342 (C. A. 9).

B. Respondent's partial reinstatement theory

Respondent's final argument is that it did not violate the Act in selecting Cloninger and Walters for layoff because those employees, being a part of the common labor pool in their respective departments, had been only partially reinstated at the end of the strike, their places having been partially filled by other employees in the common labor pool who were hired or returned to work before the strike termination date. This argument, as the Board found (R. 55-56), is "based upon premises, not only inconsistent with the terms of the strike settlement agreement, and otherwise false in fact, but unsupportable in law."

In the first place, the strike settlement agreement makes

[10]It may be noted that if the negotiators for the respective parties tacitly joined to conceal from the Union membership a secret collateral understanding, such understanding would not be binding upon the Union. 9 *Wigmore on Evidence* (3d ed. 1940), sec. 2463.

no reference, either expressly or by implication, to "partial reinstatement" of strikers for whom there was available work. On the contrary, the agreement explicitly provides for the return of such strikers "without discrimination" and for the protection of their "job rights" (*supra*, p. 6).

In the second place, Cloninger and Walters, at the conclusion of the strike, were reinstated to the precise jobs within the common labor pool in their respective departments at which they were working when they went on strike (*supra*, pp. 13, 14). Moreover, at the time Cloninger was laid off from his department, he was replaced by Cox who, upon returning to work during the strike, was placed in another department and did not reenter Cloninger's department until some time after Cloninger's return (R. 56-57, n. 15; 189-190, G. C. Exh. 12). Consequently, even if Cloninger had not been reinstated to his precise old job, Cox, upon his return to work during the strike, could not have replaced Cloninger, even partially. Moreover, as the Board pointed out (R. 56, n. 15), "Though common labor in each department be considered a pool, the pool presumably was no larger upon their [Cloninger's and Walters'] return than when they left on strike.[11] Even more difficult to follow is the claim that they were replaced by employees who had worked at their sides before the strike, but who, although they had gone on strike, had chosen to return to work before the strike's termination date. Whether or not an employee has been replaced is to be tested not by whether someone else has performed his work during his absence on strike, but by whether a vacancy exists for him to his former job at the time he

[11]On October 10, just prior to the termination of the strike, there were working in respondent's employ about two-thirds as many employees as had been working at the commencement of the strike (R. 31; 262-263).

elects to abandon the strike and to return to work."

Finally, in holding respondent's position unsupportable in law, the Board correctly stated (R. 57):

> *N. L. R. B.* v. *Mackay Radio Telegraph Company*, 304 U. S. 333, does not, as the Respondent suggests, support its position in that regard; rather it refutes it. The holding in that case—that an employer "is not bound to discharge those hired to fill the places of [economic] strikers upon the election of the latter to resume their employment in order to create places for them"—is based upon the proposition that no discrimination may be found in an employer's refusal to restore to work economic strikers for whom vacancies no longer are open because the employer, with the non-discriminatory object of continuing his business, has replaced the strikers during their voluntary absence on strike. But where, as in this case, places are in fact available for the returning strikers, and they are actually restored to their former jobs at the termination of the strike, the *Mackay Radio* doctrine cannot be construed to justify as non-discriminatory their "partial reinstatement," as that term is used by the Respondent. For, as the Supreme Court expressly recognized in the *Mackay Radio* case, strikers during the course of a strike retain their status as employees under Section 2 (3) of the Act, and, if places are available upon their election to return, any discrimination in putting them back to work is prohibited by Section 8. The controlling rule was recently restated by the Board in *Matter of General Electric Company*, 80 NLRB, No. 80, as follows: " . . . except to the extent that a striker may be replaced during an economic strike, his employment relationship can-

not otherwise be severed or impaired because of his strike activity."

II

The complaint does not fall within the 6 months limitations proviso to Section 10 (b) of the Act

Respondent contends that the unfair labor practices alleged in the complaint are barred by the limitations proviso to Section 10 (b) of the Act which provides that no complaint shall issue based upon unfair labor practices occurring more than six months prior to the filing and serving of charges (R. 350). It asserts that although the charges were filed and served within six months of the lay-offs of Cloninger and Walters, they were not filed and served within six months after respondent inaugurated its discriminatory seniority policy pursuant to which the lay-offs took place. Respondent argues that the limitation period should begin to run from the date the policy was inaugurated. The Board, we believe, properly rejected this contention.

In the first place, by asserting that the date upon which it established the discriminatory policy is the controlling date, respondent seeks to profit from its own failure to disclose to its employees the nature of such policy. Thus, respondent, although contending that the policy was agreed to by the union negotiators at the time of the submission of the strike settlement agreement to the union membership for approval, asserts that the strike seniority policy was not incorporated in the settlement agreement because of a realization that the union members might refuse to ratify the agreement and return to work if they knew of respondent's strike seniority policy (R. 256; *supra*, pp. 10-11). Respondent knew, moreover, that the union members, in voting to accept the strike settlement agreement, which provided that they should return to work with-

out discrimination and that the current contract should remain in effect, would naturally expect to operate under the seniority provisions of that contract. It also knew that the union negotiators thereafter, in connection with some railroad department employee grievances, refused to recognize the existence of any seniority agreement which would discriminate against strikers (R. 37, 61; 110-111, 137, 281). Respondent nevertheless failed to announce its strike seniority policy to its employees, post notices of it on its bulletin boards or in any other way inform the employees generally of its policy (*supra*, p. 9). Even during the 1948 negotiations for a new contract, respondent made no mention of its strike seniority policy and the "recommended agreement," signed by the negotiators for respondent and for the Union and ratified by the union membership, made no mention of such a policy (*supra*, p. 12). It is not surprising, therefore, that Cloninger, although a union steward, had never heard of the policy until about a month prior to his lay-off and that Walters apparently did not know of it until after receiving his lay-off notice (*supra*, pp. 14, 15).

In these circumstances respondent is in effect arguing that the only valid cause of action open to cognizance by the Board occurred at the time when respondent formulated the new seniority policy, even though the employees themselves were not made aware and did not know of the change in policy. The premise underlying respondent's contention is that its mere promulgation of the discriminatory seniority policy at the end of the strike was a violation of Section 8 (a) (3) as to which the employees were required promptly to file charges with the Board, even though its conduct was not known to the employees. The Board, of course, did not pass upon the question whether the unpublished promulgation was itself a violation since the issue before it was not the

legal effect of the respondent's conduct at the time that it inaugurated the seniority policy, but of its later action in laying off two employees pursuant to the discriminatory policy thus inaugurated. It is difficult to see how respondent's conduct in the abstract, unknown to the employees, could constitute a violation of Section 8 (a) (3) of the amended Act since it could be argued that such undisclosed conduct could not reasonably tend "to discourage membership in a labor organization" within the meaning of that section.

But regardless of whether the employees generally or Cloninger and Walters in particular knew of respondent's strike seniority policy prior to the six months limitation period, the Board believes it was nevertheless proper to issue the complaint in this case. As already pointed out, the Board did not find that respondent engaged in an unfair labor practice by inaugurating its discriminatory policy. It found rather that respondent had violated the Act "by continuing to maintain it; more specifically by applying and giving effect to it in the lay-offs of Cloninger and Walters" (R. 60). [12]

It did not, moreover, base its decision in this case upon employer conduct occurring prior to the 6 months period preceding the filing and serving of charges but considered such conduct, as it has done in other cases,[13] as back-

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[12]At the commencement of the hearing, the General Counsel announced that despite a broader allegation in the complaint, an unfair labor practice finding was being sought only with respect to respondent's conduct in maintaining and giving effect to the discriminatory policy within the 6-month period preceding the filing and serving of the charge (R. 60; 88).

[13]See, *e.g.*, *Sun Oil Co.*, 89 NLRB, No. 104, *Florida Telephone Co.*, 88 NLRB, No. 251, and *Axelson Mfg. Co.*, 88 NLRB, No. 155, in which the Board considered employer conduct prior to the 6 months period as background and to throw light on employer conduct within that period which was found to be in violation

ground and "merely for the purpose of bringing into clearer focus the conduct in issue" (R. 60-61). The Board made it plain that "Even without such consideration, however, the allegations of discrimination would have been found amply supported by such undisputed record facts as bear directly upon the lay-offs of Cloninger and Walters" (R. 61). Thus Cloninger, in protesting his lay-off notice, was informed by respondent that because he had remained away from work during the entire period of the strike, his seniority for lay-off purposes started anew when he returned to work after the strike and that this was in accordance with respondent's policy (R. 158-161, 167-168); and Walters, when he asked why he was being laid off, was informed by respondent that if he had returned to work just one day during the strike, he would not have been laid off and that "on account of the strike" he was being laid off before the other employees (*supra*, p. 15).

It is the selection of Cloninger and Walters for lay-off because they had remained on strike until the strike termination date which is the gist of the unfair labor practice here litigated. That the discrimination against them was

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of Section 8 (a) (2); *Shields Engineering & Mfg. Co.*, 85 NLRB 168, in which the Board considered employer conduct prior to the 6 months period in evaluating evidence regarding conduct within that period found to be in violation of Section 8 (1) and (3); and *Luzerne Hide & Tallow Co.*, 89 NLRB, No. 119, in which the Board considered evidence that a strike was caused and prolonged by unfair labor practices which occurred more than 6 months before the charge alleging discrimination in reinstatement of strikers was filed, the discrimination having occurred within the 6 month period. Cf. *Superior Engraving Co. v. N.L.R.B.*, (C.A. 7), decided June 27, 1950, 26 LRRM 2351, in which the Court, although disagreeing with the Board's construction of Section 10 (b), nevertheless enforced the Board's order on the theory that certain unfair labor practices commencing prior to what the Court thought to be the protected limitation period continued during the protected period.

pursuant to a policy, rather than an isolated act, is relevant to show that respondent is likely to discriminate against them again in the future as well as to discriminate against other employees who similarly exercised their statutory right to engage in union and other concerted activities. This fact therefore was appropriately considered in devising an effective remedy.

It makes no difference that respondent's original act of promulgating the strike seniority policy (at least when made known to the employees) might also be considered a violation of Section 8 (a) (3).[14] Respondent's whole conduct or any part of it might separately be considered violative of the Act. Respondent's original act subjected the strikers to the hazard of a lay-off, but this does not mean that any of the strikers would necessarily thereafter be laid off. Respondent could always repent and change its policy and, in any event, the necessity for lay-off of any of the strikers could not be certain to arise. The lay-offs, therefore, are discriminatory acts which tend to discourage union membership when they occur and it makes no difference whether they be considered as new and independent unfair labor practices[15] or merely as applications of an old but unlawful policy violative of the Act.[16]

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[14]See *General Electric Company,* 80 NLRB 510.

[15]Cf. *Brown* v. *Elliott,* 225 U.S. 392, 400-401; *Lonabaugh* v. *United States,* 179 F. 476, 478 (C.A. 8), conspiracy cases in which, although prosecution for the original act of conspiracy was barred, each overt act committed pursuant to the conspiracy and occurring within the limitation period was held not barred.

[16]Cf. also *N.L.R.B.* v. *Superior Engraving Co.,* (C.A. 7), decided June 27, 1950, 26 LRRM 2351, holding that a continuing refusal to bargain during the limitation period is not excused by the union's lack of majority status during that period since the loss of majority status was caused by the employer's refusal to bargain prior to the limitation period, when the union had actually been chosen by a majority, and holding also that a

III

The filing requirements of Section 9 (f), (g) and (h) of the Act have been fulfilled

As a further ground for dismissing the complaint, the respondent has contended that the requirements of Section 9 (f), (g) and (h) of the amended Act have not been fully complied with (R. 350-351). That section provides that no complaint shall be issued pursuant to any charge filed by a labor organization unless the financial statement and non-Communist affidavit filing requirements contained in that section have been satisfied by such labor organization and by "any national or international labor organization of which it is an affiliate or constituent unit."

The record shows without contradiction that at the time the complaint was issued, Local 10-364, the charging party, as well as the International Woodworkers of America, with which the charging party is affiliated, were in compliance with such filing requirements (R. 24; 85). Respondent, however, has attempted to read into Section 9 (f), (g) and (h) a requirement which neither the literal language nor the purpose of that section demand. Respondent has pointed out that it has a number of operations in scat-

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unilateral grant of wage increases prior to the limitation period continued in effect within the limitation period and was therefore a continuing unfair labor practice;*United States* v. *Guertler*, 147 F. 2d 796, 797 (C.A. 2), certiorari denied, 325 U. S. 879, holding that the statute of limitations applying to the offense of failing to keep the selective service board informed of the registrant's address did not begin to run during the continuous failure to notify the selective service board; and *Urie* v. *Thompson*, 337 U. S. 163, where it was held that in cases involving occupational diseases arising under the Federal's Employers' Liability Act, the limitation period does not begin until the injured person knew or should have known he had contracted the occupational disease. See also, "Developments in the Law — Statute of Limitations", 63 Harvard Law Review 1177, 1205.

tered localities; that the production and maintenance employees in these operations are included in a single, company-wide bargaining unit with the International as the certified bargaining representative for that unit; that the International has affiliated with it four locals, including the charging local which encompass within their membership employees in such unit; that these locals jointly with the International have been parties to collective bargaining agreements with respondent covering employees in the bargaining unit; and that two of these four locals were not in compliance with the filing requirements of Section 9 (f), (g) and (h) at the time the complaint was issued (R. 19-20,, 85, 89-92).[17] Respondent argues that since this proceeding basically involves the validity of its strike seniority policy as applied throughout the bargaining unit, it is a prerequisite to invocation of the Board's processes that all constituent locals with membership among the employees in the unit be in compliance. It asserts, therefore, that the local which filed the charges in this proceeding, and to which Cloninger and Walters and other employees of respondent's Clearwater plant in Lewiston, Idaho, belong, was acting as a front for the other three locals, two of which were not in compliance with the statutory filing requirements.

In arguing thus, respondent fails to differentiate between a proceeding in which, as here, discrimination against employees is involved, and a proceeding seeking merely to establish or otherwise aid the bargaining position of a labor organization, such as a proceeding for certification of a non-complying union as a collective bargaining representative or a proceeding to compel an employer to bargain with

[17]The Board's records show, however, that even the two locals not then in compliance subsequently complied with the statutory requirements.

a noncomplying union. In the latter category of cases, noncompliance would certainly justify an administrative refusal to proceed even though the charge was filed by an individual or a complying union and the Board has so held. *Campbell Soup Company,* 76 NLRB 950; *Oppenheim Collins & Co.,* 79 NLRB 435; *Augusta Chemical Co.,* 83 NLRB 53. Indeed, shortly after the effective date of the amended Act, when there came before the Board cases involving a refusal by employers to bargain, the Board conditioned its bargaining orders upon compliance by the union with the filing requirements within 30 days after issuance of the Board's order, even though the complaint had been properly issued prior to the enactment of Section 9 (f), (g) and (h). *Inland Steel Co.* v. *N. L. R. B.,* 170 F. 2d 247 (C. A. 7), certiorari denied 336 U. S. 960, enforcing 77 NLRB 1, 16; *Marshall and Bruce Co.,* 75 NLRB 90. And in those refusal to bargain cases in which enforcement proceedings were pending when the Act was amended, the Board requested the courts to condition enforcement of the bargaining orders upon compliance by the union within 30 days of the court decree. *N. L. R. B.* v. *O'Keefe and Merritt Mfg. Co.,* 178 F. 2d 445 (C. A. 9); *N. L. R. B.* v. *Brozen,* 166 F. 2d 812, 813-814 (C. A. 2).

The present case, however, does not involve an attempt to aid the bargaining position of a noncomplying union, either directly or indirectly. As the Board observed, "All this proceeding looks toward is a cease and desist order enjoining certain alleged practices that are violative of individual employee rights protected by the Act" (R. 25). Although respondent's strike seniority policy may have been adopted in all its plants, the unfair labor practices with which this proceeding is concerned occurred at respondent's Clearwater plant at Lewiston, Idaho, and respondent is not required to post cease and desist notices except at its Clearwater plant (R. 81). The charging local, which

had jurisdiction over the employees in that plant, was in compliance. The International, with which that local was affiliated, was similarly in compliance.

Essentially, respondents' argument comes to no more than a claim that it should not be prohibited from making further unlawful layoffs because such layoffs might occur in a plant whose employees are members of one of the noncomplying locals and, accordingly, such a prohibition might in some fashion benefit that local. In answer, the Board stated: "That members of other locals which are not now in compliance may also incidentally derive benefits from an an unfair labor practice finding in this case, is immaterial" (R. 25). The charge in this case might properly have been filed by individuals with no fewer incidental benefits to the noncomplying locals.[18] In the Board's view, the right of the charging local to file a charge on behalf of its affected members was no less.

We submit that whether the statutory requirements have been met in this case hinges on the answer to one simple question, i.e., were the charging labor organization and "any national or international labor organization of which it is an affiliate or constituent unit" in compliance. Since the undisputed answer is in the affirmative, issuance of

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[18]The Board has consistently proceeded upon charges filed by individuals in their own behalf or in behalf of other employees where the issue involved was whether the employer had violated Section 8 (a) (3). See *Luzerne Hide and Tallow Co.*, 89 NLRB, No. 119; *B. F. Goodrich Co.*, 88 NLRB, No. 117; *Globe Wireless, Ltd.*, 88 NLRB, No. 211; *Olin Industries, Inc.*, 86 NLRB, No. 36; *United Engineering Co.*, 84 NLRB 74. Cf. *N.L.R.B.* v. *Fulton Bag & Cotton Mills*, 180 F. 2d 68, 70-72 (C.A. 10) in which the court upheld the Board's refusal to investigate whether an individual who filed the charge on behalf of a discriminatorily discharged employee was a Communist. The court there held that neither the Communist membership of the charging individual nor his motives could deprive the Board of jurisdiction.

the complaint was authorized by the Act.

CONCLUSION

It is respectfully submitted that the complaint was properly issued, that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue enforcing the order in full.

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APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Supp. III, Secs. 151 *et seq.*), are as follows:

SEC. 2. When used in this Act— * * *

(3) The term "employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute . . .

RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7; . . .

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be en-

tertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and by-laws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor; and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(3) furnish to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secre-

tary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor orgaization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or costituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is n affiliate or constituent unit that he is not a member of the Commuist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organizations that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * *

SEC. 10 (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

* * * * *

(e) The Board shall have power to petition any circuit

court of appeals of the United States * * * within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

* * * * *

APPENDIX B

W. A. Green (Board Witness)

Redirect [Tr. 190], Pages 16 Through 25

Mr. George: (Q) They tried to explain this plant seniority yesterday at the hearing. It never was clear to me just how you figured out this, and, then, the plant seniority given a job. Can you help me out on that at all We will take the common laborer's job in the Carpenter Department, that is due some place else?

A. Well, the boys rather understood that common labor was a pool, and that he had rights from the first day he came on the plant, and if he was laid off, why, he would have a job as long as there was a common laborer on the plant with less rights than him, if he was capable of handling that job.

Q. Does that extend for anything beyond common labor?

A. Well, if a man, a skilled man, was laid off of a skilled job, he would probably revert back to common labor, unless there was another less skilled job that he had rights on. Then, he would maintain a job on the plant, his plant rights.

Q. Well, am I right in assuming, then, that as far as common labor is concerned, that he is supposed to exhaust his seniority in the department, and if by exhausting it, he doesn't have a job, then, he can look to the other department and see whether or not he has seniority, and bump somebody over there to get a job, is that right?

A. Yes.

[Tr. 198], Lines 16 through 25

Mr. Merrick: (Q) Mr. Green, anyway to your knowledge, the reason given to these men why they were laid off, was because of lack of plant seniority?

A. Yes.

Q. Do you know if their work records as to whether or not their work was satisfactory or excellent, was that brought into the picture at all on their lay-offs?

A. Well, this job that Slater was on, I believe that strike seniority was mentioned, but Slater was on the job before October 13th, so, he maintained the job.

[Tr. 199], Lines 1 through 9

Q. Well, in your opinion, do you think the controlling factor in the lay-offs was the question of strike seniority?

A. It was the question that Slater had come back prior to October 13th and had that particular job, so, Walters couldn't bump him off of it.

Q. And would you say that was, also, true as to Mr. Cox and Mr. Cloninger?

A. I am not too familiar with all the jobs that they held, but I believe it was, yes.

CHARGE AGAINST EMPLOYER

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that

POTLATCH FORESTS, INC., (Name of employer) at Lewiston, (Address of establishment) (Street)

Idaho (City) (State) employing 4,000 (Number) workers in Logging and lumber manufacturing (Nature of business)

has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) subsections (1) and (3) and (5) of said Act, in that:

2. Said employer has discriminated against members of the undersigned union in the lay-off, re-call and promotion of workers, and has adopted and followed the policy of giving first preference in such matters to employees who worked during a strike held in September and October 1947 and has refussd to accord the members of the undersigned union who participated in said strike the seniority rights to which they are entitled under the collective bargaining agreement with the undersigned and, in particular, beginning about January 9, 1949 when operations were curtailed, laid off Gail Cloninger, Claude Walters and Wilbur Hollenbeck, while retaining in its employ positions in their workers with less seniority for the reason that said employees and each of them participated in said strike and were active members and supporters of the undersigned union.

Said company has advised its employees that it will give first preference employment in connection with lay-off and re-call of men to employees who worked during the strike and discriminated against members of the undersigned union who participated in said strike, and has by other acts and statements coerced and intimidated its employees from joining or remaining members of the undersigned union.

Said employer has at all times since on or about October 10, 1947 failed and refused to bargain in good faith with the undersigned union with respedt to grievance arising out of the application of the seniority clause of the collective bargaining contract and has taken the arbitrary position, contrary to law, that all employees who worked during the strike are entitled to special preference and super-seniority.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce eithin the meaning of said Act.

3. (Paragraphs 3, 4, and 5 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number _____. The financial data filed with the Secretary of Labor is for the fiscal year ending _____.
A certificate has been filed eith the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method esployed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

4. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

5. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

6. INTERNATIONAL WOODWORKERS OF AMERICA, Local 8-364
(Full name of labor organization, including local name and number, or person filing charge)

Lewiston, (Address) (Street) Idaho (City) (State) (Telephone number)

7. INTERNATIONAL WOODWORKERS OF AMERICA
(Full name of national or international labor organization of which it is an affiliate or constituent unit)

Governor Building (Address) (Street) Portland (City) Oregon (State) BR 5087 (Telephone number)

DO NOT WRITE IN THIS SPACE

Case No. 19 CA 166

Date filed 2/10/49

9(f), (g), (h) cleared _____

By G F Hartung
(Signature of representative or person filing charge)
International Vice-president
(Title, if any)

Subscribed and sworn to before me this 10 day of February 1949, at Portland, Oregon as true to the best of deponent's knowledge, information and belief.

HC (25) END

General Counsel 1-a

(Notary Public)

(SUBMIT ORIGINAL AND FOUR COPIES OF THIS CHARGE)

NLRB 877
(4-15-45)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

POTLATCH FORESTS, INC.

and

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCAL 10-364

Case No. 19-CA-166

AFFIDAVIT OF SERVICE OF CHARGE

DATE OF MAILING 2/17/49

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the follow persons, addressed to them at the following addresses:

POTLATCH FORESTS, INC.
LEWISTON, IDAHO

REGISTERED NO. 243258
RETURN RECEIPT REQUESTED

General Counsel's 1-B

4C
(24)

Subscribed and sworn to before me

this 17th day of FEBRUARY, 1949

[signature]
MAUDE SIPPLE Designated Agent.
NATIONAL LABOR RELATIONS BOARD

[signature]
FLORENCE . . . . , CLERK TYPIST

10—64800-1 U. S. GOVERNMENT PRINTING OFFICE

NLRB 877
(4-15-45)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

POTLATCH FORESTS, INC.

and

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCAL 10-364

Case No. 19-C-166

AFFIDAVIT OF SERVICE OF SECOND AMENDED

DATE OF MAILING 3/21/49

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

POTLATCH FORESTS, INC.
LEWISTON, IDAHO

REGISTERED NO. 243333
RETURN RECEIPT REQUESTED

General Counsel's 1-C

Subscribed and sworn to before me

this 22nd day of MARCH, 1949

Florence M. Klenz
FLORENCE M. KLENZ, SECRETARY

SUSAN R. MIZELLE, Designated Agent.
NATIONAL LABOR RELATIONS BOARD

AMENDMENT

CHARGE AGAINST EMPLOYER

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that

POTLATCH FORESTS, INC. (Name of employer) at Lewiston (Address of establishment) (Street)

Idaho (City) (State) employing 4000 (Number) workers in Logging and Lumber Mfg. (Nature of business)

has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) subsections (1) and (3) of said Act, in that:

2 Said employer has discriminated against members of the undersigned union in the lay-off, recall and promotion of workers, and has adopted and followed the policy of giving first preference in such matters to employees who worked during a strike held in September and October 1947 and has refused to accord the members of the undersigned union who participated in said strike the seniority rights to which they are entitled under the collective bargaining agreement with the undersigned, and, in particular, beginning about January 9, 1949 when operations were curtailed, laid off Gail Cloninger, Claude Walters and Wilbur Hollenbeck, while retaining in its employ in their positions workers with less seniority for the reason that said employees and each of them participated in said strike and were active members and supporters of the undersigned union.

Said company has advised its employees that it will give first preference employment in connection with lay-off and re-call of men to employees who worked during the strike and discriminated against members of the undersigned union who participated in said strike, and has by other acts and statements coerced and intimidated its employees from joining or remaining members of the undersigned union.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3 (Paragraphs 3, 4, and 5 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number _____. The financial data filed with the Secretary of Labor is for the fiscal year ending _____. A certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

4. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

5. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

6. INTERNATIONAL WOODWORKERS OF AMERICA, Local 1-364
(Full name of labor organization, including local name and number, or person filing charge)

(Address) (Street) Lewiston (City) Idaho (State) (Telephone number)

7. INTERNATIONAL WOODWORKERS OF AMERICA
(Full name of national or international labor organization of which it is an affiliate or constituent unit)

Governor Bldg., (Address) (Street) Portland (City) Oregon (State) BR 5687 (Telephone number)

By A F Harting
(Signature of representative or person filing charge)

International Vice-President
(Title, if any)

DO NOT WRITE IN THIS SPACE

Case No 19 CA 166

Amendment

Date filed 3/18/49

9(f), (g), (h) cleared 6-30-49

Subscribed and sworn to before me this 15 day of March 19 49 at Portland, Oregon

as true to the best of deponent's knowledge, information and belief.

Marion T Welborn
Notary Public

My commission expires 2-22-53

(SUBMIT ORIGINAL AND FOUR COPIES OF THIS CHARGE)

Article XIX — Revision and Termination

(a) Except as it may be affected by the wage clause, this agreement shall be in full force and effect until April 1, 1947, and shall continue thereafter for yearly periods unless written notice of termination or revision is given by either party, subject to the terms set forth n this article.

(b) Unless mutually agreed to, either party shall notify the other of a desire to change the terms of this agreement not less than sixty (60) days prior to the expiration date, and negotiations shall start thirty days hence.

(c) If the agreement is opened by either party, then the other party shall have thirty (30) days after the receipt of the notice to name its desider revisions.

(d) If no agreement is reached at the expiration of this agreement and negotiations are continued, the agreement shall remain in force up to the time a subseqent agreement is reached, but shall terminate if agreement is not reached by May 1, unless otherwise mutually agreed to by the parties.

(e) This agreement may be terminated on April 1 of any year by either party giving at least sixty (60) days written notice to the other party of a desire to terminate. However, both parties agree to meet in negotiations within fifteen (15) days of receipt of notice for the purpose of negotiating possible renewal of the agreement. If negotiations continue after April 1 of any year, the existing contract shall remain in full force and effect until May 1, unless an extension is mutually agreed to by the parties or a new agreement has been mutually accepted.

AGREED INTERPRETATION OF CLAUSES ON WHICH UNION DESIRED CLARIFICATIONS MAY 7, 1949

1. Preamble Clause, third paragraph:—

   The company must remain the judge of what disciplinary action, if any, is taken by the company of any employee who is proven to be disruptive. Likewise, the Union must remain the judge of what disciplinary actilon, if any, is taken by the Union as to any of its members who is proven to be disruptive.

2. Article I—Recognition:—

   The first sentence of the first paragraph means the Union is recognized as the bargaining agent for the emploees as certified by the NLRB, March 4, 1944, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment as covered by this agreement.

3. Article III—Methods for Handling Disputes:—

   The next to the last paragraph means the Union will not recognize any other Union's picket line and will go through any such picket line.

4. Article V—Hours of Labor, paragraph (e):—

   Time lost on the Holiday cannot be made up on Saturday at straight time unless the Union agrees thereto.

5. Article V—Hours of Labor, Section 2 (a):—

   The exception of breakdowns or other shut downs beyond the control of the company applies to the whole of Article V, paragraph (2) (a).

6. Article XI—Holidays, last sentence of the last paragraph:—

The last regularly scheduled shift is completed at straight time even though part or all of the hours are in the calendar holiday. The next shift is the holiday shift subject to the time and one half rate if it is worked.

7. Article VII—Union Security Clause, last paragraph:—

Prior to this agreement on these interpretations, the last paragraph of Article VII, applied to any veteran of the Armed Services of World War II who was employed by the company within one year of his discharge. Any such veteran who is now employed is not required to join the union and if he has or does, he cannot be discharged for failure to maintain his membership in good standing.

After May 15, 1947, the last paragraph of Article VII will only apply to veterans of the Armed Services of World War II who left the employ of the company to enter the Armed Services and who returned to the employ of the company within one year of their discharge. Other veterans of the Armed Services who are hired after May 15, 1947, will be subject to the Union security clause (Article VII).

8. Aricle IX—Vacation:—

Prior to this agreement on these interpretations an employee was required to be on the payroll at the time the vacation was taken in order to receive the vacation with pay unless he was governed by Section 1 (h) or (i).

For the purpose of the 1947 vacations, the following interpretations will be controlling:

Employees who qualify for three or four day vacations must be on the payroll March 31, 1947, and the date when the vacation is taken. Individuals who qualify for five days vacation with pay and are not employed at the time the vacation is taken will be paid five days vacation pay provided they make application to the Company for the same between May 1 and July 1.

Employees qualified for two weeks vacation with ten days pay must be employees on the payroll at the time the vacation is taken.

9. Article X—Classification:—

If an employee is no longer needed in his job classification and is placed in a lower paying job classification for the balance of the shift he is paid at his higher rate for the balance of that shift. If, during the next day or subsequent days he is no longer needed in the higher paying job classification, the employee shall be informed that he may either lay off or return and work in the job classification available and at that job's rate.

10. Aricle XII—Seniority:—

The Union contends that 65 year old employees are subject to the seniority clause in the same manner as any other employee. The seniority clause applies to promotions and retention of jobs during curtailment. The company does not consider the retirement of employees for age is any part of this agreement.

11. Article XIV—Wages:—

When the contract is opened or closed on "wage issues" it is opened or closed on all wage questions.

The company and the Union agree to recommend to their respective parties that the 1946 Master Working Agreement, together with the above interpretations, be adopted as the Master Working Agreement for 1947, with dates changed to conform with the year.

It is understood that the wage clause (Article XIV) is still open for further negotiations.

Dated at Lewiston, Idaho, this seventh day of May 1947.

POTLATCH FORESTS, INC.

IWA-CIO LOCALS 361, 358, 119 AND 364

(s) J. J. O'Connell
(s) C. O. Graue
(s) J. C. Parker
(s) J. H. Bradbury
(s) D. S. Troy
(s) George W. Beardmore

(s) Fred Slefkin
(s) Frank Gordon
(s) Harry Lee
(s) Chauncey Knoll
(s) Wm. Schwartzman
(s) Hugo Wachsmuch
(s) Frank Jennings

(no 2)

(COPY)

May 28, 1947

The Potlatch Forests, Inc. Negotiating Committee at Lewiston, Idaho, and the Northwest Regional Negotiating Committee of the International Woodworkers of America agree to recommend to the parties for whom they have authority to negotiate:

1. A 7½¢ per hour wage increase be made effective as of the first day of April 1947, except for scheduled hour employees for whom the increase shall be spread on the basis of a weekly increase in accordance with the formula used when the January 1, 1947, increase was granted. The application of this increase to piece-workers shall be left for local negotiations.

2. That Article XIV, Wages, paragraph (a), be rewritten to provide for a discussion of wages on September 1st, 1947, wording of the wage clause to be worked out by the company and union.

3. The Company agrees to negotiate further on the possibility of the elimination of the wage differential between the Fir and Pine areas; - such negotiations to begin on or immediately following that date as is finally agreed to by the other major lumbering companies or Associations of Companies operating in that portion of the Pine area known as the Inland Empire.

4. That the 1946 Master Agreement, together with the recent interpretations, be signed and extended to April 1st, 1948.

NORTHWEST REGIONAL NEGOTIATING COMMITTEE, I.W.A.	POTLATCH FORESTS, INC. NEGOTIATING COMMITTEE
/s/ Ellery Foster	/s/ Roy Huffman
/s/ Ray Lea	/s/ Otto N. Luschel
/s/ O. D. Armstrong	
/s/ Pete Nelson	

3

POTLATCH FORESTS, INC.
LEWISTON, IDAHO

January 21, 1949

rnational Woodworkers of America (CIO)
Governor Building
land, Oregon

rnational Woodworkers of America (CIO)
l 10-361
latch, Idaho

rnational Woodworkers of America (CIO)
l 10-368
117
ee, Idaho

rnational Woodworkers of America (CIO)
l 10-119
r d'Alene, Idaho

rnational Woodworkers of America (CIO)
l 10-364
409 Weisgerber Building
ston, Idaho

You are hereby notified that Potlatch Forests, Inc. has notice that it desires to negotiate a written agreement based on the Master Working Agreement effective April 1, 1946 as modified by the subsequent agreements of May 7 &18, 1947, October 12, 1947 and April 13, 1948, incorporating in one agreement the various interpretations, clarifications and amendments which have never been combined into a single signed agreement.

Very truly yours,

POTLATCH FOREST , INC.

Docket No. 19-C-166 OFFICIAL EXHIBIT No. General Counsel 9

by: George H. Boardmore

Disposition: Identified C Received C Rejected

In the matter of Potlatch Forest

Date 1/21/49 Witness Gordon Reporter Chester L. Hoff

No. Pages

GENERAL COUNSEL'S EXHIBIT 12

LETTERHEAD OMITTED

LEWISTON, IDAHO
General Offiices

April 6, 1949

Mr. Howard E. Hilbun, Field Examiner
National Labor Relations Board
515 Smith Tower
Seattle, Washington

Re: Potlatch Forests, Inc.
Case No. 19-CA-166

Dear Mr. Hilbun:

In your letter of March 30, 1949, you requested the following information:

1. Whether or not men working in the larger departments (of which the Clearwater Plant has 8 instead of 6) were eligible for transfer to all of the sub-departments listed thereunder in case of curtailment. The men are eligible for transfer to these sub-departments and other departments in the case of curtailment but in accordance with provisions covering curtailment.

2. You asked for the seniority record of the following employees covered in the charge filed March 15, 1949:

Claude Walters
Gail Cloninger
Wilbur Hollenbeck

Information on Claude A. Walters:

He has always worked at a common labor rate. Hired May 6, 1944, for the pipe crew. Transferred May 17, 1944

to and worked in the unstacker until January 18, 1949. At this time there was a curtailment in the unstacker where Walters was working at the common labor rate. He worked in the replant at common labor rate from January 18, 1949 to January 22, 1949, but could not handle this work. However, on January 20, 1949, he was offered a watching job paying the same rate (common labor) but turned it down saying that his feet could not stand it. His other jobs, however, required him to be on his feet also.. On January 27, 1949, he was offered a box picking job in the replant on the night shift, paying common labor rate plus a night shift differential, but refused that job. His reason was because of the night work and lack of transportation. However, on his work in the unstacker he worked nights when the crews rotated. The bus route passes by his place. He also said he was not too anxious to work because he had some building to do around home and said he would be back when the weather warmed up. On March 2, 1949 he called at the Employment Office and was offered a clean up job in the unstacker on the 3:00 A.M. to 11:00 A.M. shift. He refused that job because he said he had no transportation and asked for a job tending lawns. He was also offered a job helping Axel Isaacson washing down roofs. He refused that job. He went back to work on the dock at common labor rate March 10, 1949 and on March 21, 1949 went to the unstacker at common labor rate. Following the strike of August 7, 1947, he returned to work October 13, 1947. All of his jobs have been common labor jobs and he has refused several which he could do. No grievance was ever filed in connection with this man and his loss of time was due to his own choice.

The man who was retained in the unstacker was Paul Slater whose seniority record is as follows:

Shook Department	1-15-46	to	7-1-46	
Replant	7-1-46	to	7-8-46	
Shook Department	7-8-46	to	5-9-47	
Unstacker	5-9-47	to	8-7-47	(strike)
Unstacker	9-9-47	to	3-14-49	

When Slater returned September 9, 1947, during the course of the strike, he was put on an unstacker common labor job. When Walters returned October 13, 1947, after the strike settlement, he was also given a common labor job in the unstacker department.

Information on Gail Cloninger:

He was first hired July 24, 1940, and worked in the Box Factory until December 31, 1941, when he was drafted. He was rehired with veterans re-employment rights August 19, 1943, and went back to work in the Box Factory. He worked up to ripper in the Box Factory. On September 3, 1946, he requested a transfer to the carpenter crew of the maintenance department at common labor where he worked until the strike on August 7, 1947. He returned October 13, 1947 to common labor in the carpenter crew and remained there until it was curtailed December 30, 1948. January 4, 1949, he was offered a job at the same rate and went to work in the cut-up department on January 6, 1949. He worked there until requested time off for a hernia operation. All his work in the Maintenance Department with the carpenter crews was at the common labor rate. He was replaced in the carpenter crew by Dale Cox, a carpenter helper working at 5 cents above common labor when the curtailment came. His employment record is as follows:

Box Factory	11-13-46	to	6-5-47	
Carpenter Crew	6-5-47	to	8-7-47	(strike)

Sawmill	10-1-47	to	12-15-47
Carpenter Crew	12-15-47	to	present

The union has also requested information relative to Clifford Greer who remained in the carpenter crew following the curtailment. His seniority record is as follows:

He was hired April 10, 1940 and worked at miscellaneous jobs until April 24, 1940. He then went into the sawmill April 24, 1940, and remained there until April 29, 1946. On that date he went to the carpenter crew and remained there until May 26, 1946, when he was transferred back to the sawmill. On May 1, 1947, he was transferred to the carpenter crew again. Under doctor's orders he was given sick leave August 2, 1947, and returned December 2, 1947. On September 1, 1948, he was promoted to carpenter's helper at five cents above common labor which job he held until the curtailment December 30, 1948.

You apparently have requested the same information from the union as Mr. Gordon has requested it from our Employment Department. We are forwarding a copy of this letter to him.

POTLATCH FORESTS, INC.

Very truly yours,
GEORGE W. BEARDMORE

GWB:wh
cc: Frank Gordon